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ABSTRACT

Although women in North Carolina increasingly enter the work force to stay and their "protected" status in marriage is no longer secure, North Carolina's women do not have economic equality under law with men. Husbands have full rights to the rents, profit, and control of entirety property and real estate during marriage; and no women serve as judges on the North Carolina Superior Court, the Court of Appeals, or the Supreme Court where major policy is formulated. While women can now sign binding contracts, sue in their own names, and own their earned wages, they are penalized for performing as caretakers of the home and children. A plan of action is needed which incorporates women's roles as wife, mother, volunteer, and worker and which assures women financial security. Certainly, dramatic changes in the law affecting women's roles in North Carolina have been made, such as the Equitable Distribution of Property Act. But numerous issues remain to be resolved including inequalities between male and female single parents, disproportionate responsibilities for caring for children, absence of job rights related to pregnancy, lack of protection for workers in small businesses with less than 25 employees, sex discrimination in insurance coverage, the hazards to reproduction of work-related substances, child care for working parents, and child support enforcement. (RH)

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Legal Aspects of the Changing Roles of Women in North Carolina©

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LEGAL ASPECTS OF THE CHANGING ROLES OF WOMEN IN NORTH CAROLINA©

Meyressa H. Schoonmaker*

It has been said that we live in a child-negative society in which we resent feeding hungry children in school lunch programs. We will not pay adequate salaries to our children's teachers. The court system does not enforce child support, and the world of work makes no provisions for parents with children. That in a nutshell represents present policies toward women and children.

There are several areas of policy and law in which there have been recent dramatic changes which affect women. Impressive and frightening statistics cataloguing these changes demonstrate that: one-half of the children alive today will live in a single-parent family before age 18; divorce in the U.S. doubled between 1965 and 1978; and women earn 59¢ for every dollar earned by men. In 1977, women earned annually an average of $10,688 and men $17,062. In North Carolina in 1978, women earned an average of only $7,900, $11,000 less than the national average of men.

Education does not equalize these income differences. The median income of women with a college education is less than that of men with a high school education. More women are working than ever before, and there are more single parents and female heads of household. In 1960, there were 4.5 million female heads of household; in 1979 this figure had increased to 8.5 million. One out of five households is headed by a female. Of the documented 133,000 North Carolina families headed by women, 74,000 were living in poverty in 1979.

It is predicted that by the year 2000, 63.4% of North Carolina women will be in the labor force. In 1970, 46.5% of North Carolina women were in the labor force as compared with 43.4% nationally[1]--a 3.1% differential of more North Carolina women working outside the home. A major cause of this differential is the low wages paid to women in North Carolina.[2]

It is my thesis that women are in the work force to stay. They have learned that money talks and at the same time liberates. North Carolina women are not going to tolerate the situation in which the breadwinning husband can close joint checking and savings accounts and leave his wife begging for grocery money to feed herself and their children as present North Carolina law does. The problems women have today in their roles in the home and on the job are related to the fact that the majority of women have always been given a mixed message. The primary message was that they should marry; the secondary message was that if they worked, it would only be temporary and then for the purpose of helping out the family or as a security--"heaven forbid"--if they were not chosen for marriage. Divorce was not a part of the plan and death or disability of the husband was not romantic. Women today are in desperate need of a career pattern which is in step with the reality of women's actual work and life pattern over the past 40 years and as predicted for the next 20 years into the year 2000.

The laws have changed. The "protected" status of women when they could at least depend on being provided for in a marriage--although at the cost of freedom--is no longer secure. The English common law concept which set the

man as the legal head of the household and thereby responsible for providing for his wife and children has changed. Under early common law, the husband owned his wife's personal property outright, had the right to manage and control all of her real property during marriage, and had the right to keep any money from the rents and profits of the land during their marriage. However, he also had to support her--simply because she was the wife. Upon marriage, the husband-wife become one person in law and that one was the husband. He owned his wife's and children's services and had the sole right to collect wages for their work outside the home. The wife lost her legal existence upon marriage. The English common law was based on male superiority.

We still have some of those remnants in North Carolina law today. Until the legislature sees the justice in changing the law, husbands have full rights to the rents, profit, and control of entirety property and real estate during marriage.[3] In North Carolina we changed that law for deeds dated after January 1, 1983, but we kept the old law for prior deeds. Thus, simply because he is the male, the husband has the full tobacco lease funds in Goldsboro and the corn crop lease in Whiteville even though the wife owns one-half the land.

Women have had a difficult time establishing equality with men in the home as well as outside the home. I want to share some history in this area. In 1776 New Jersey was the first state to give women the right to vote and in 1807 they simply withdrew the right. In 1836 Kentucky gave widows with children the right to vote and in 1890 Wyoming bestowed the right to vote on all women in their state. At the same time, Susan B. Anthony had been working hard for women's rights in New York. By 1860, married New York women were granted control of their own property and earnings as well as joint guardianship over their children. However, 2 years later the legislature repealed the joint guardianship law. In North Carolina today, the father of a legitimate child is the natural guardian and has preference under certain aspects of common law for appointing a guardian in a will, as well as other areas.

In 1873, the U.S. Supreme Court held in Bradwell v. Illinois[4] that the 14th Amendment did not prevent the state of Illinois from excluding women from the practice of law. Mrs. Myra Bradwell was refused a license to practice law in the state of Illinois based on the fact that she was a married woman and could therefore not enter a binding contract with clients for service. The court thus held that no female was eligible to practice law in Illinois. In affirming the Illinois decision in 1873, the U.S. Supreme Court stated that there is a:

> "wide difference in the respective spheres and destinies of man and woman. Man is, as should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . the divine ordinance indicates the domestic sphere as that which properly belongs to the domain and function of womanhood."[5]

It was not until May 21, 1919, that women finally received the right to vote by Constitutional Amendment. And now, 110 years after the Bradwell case, women can practice law in all states and one woman serves on the U.S. Supreme Court. However, given that 52% of the nation's population is female, it is

sad how little representation women have. In North Carolina, for example, no woman serves as judge on any court above the District Court, the lowest state court. There are no women serving as judges on the North Carolina Superior Court, the North Carolina Court of Appeals, or the North Carolina Supreme Court where major policy is formulated. Thus, major legal decisions affecting the lives of women and children are in the hands of men alone.

We have worked in North Carolina to bring married women back into legal existence. Although women can now sign binding contracts, sue in their own names, and own their own earned wages, we have not finished the job. Women do not make equal pay for equal work, do not have equal job opportunities or job access, and do not have equal benefits, retirement pay, or work options despite the Federal Equal Pay Act and Title VII of the 1964 Civil Rights Act. Moreover, securing women's rights through litigation is a long, arduous, and expensive process. For example, I just completed settlement of a class action suit under Title VII against Western Electric. The suit lasted for 6 years, had 228 class members, and one of the five named plaintiffs died between filing the action and settlement.

Women have performed and will continue to perform a distinct role in society based on their unique ability to give birth. As such, they are a natural parent to care for children after birth, have in fact fulfilled this role in the overwhelming majority of American families, and in most cases see themselves favorably in this role. Nonetheless, women are being penalized for performing as caretakers of the home and children because domestic responsibilities interrupt career patterns. What is needed is policy that allows women to incorporate their home and married work needs with their future needs for financial security.

We are wasting time if we only look separately at the problems of women as single parents, women in the work force, and older women, all as separate issues. They are all the result of haphazard to no life patterns for women. We allow women to be used in retail, sales, and service jobs at minimum wages in department stores, fast food chains, and so on, where women make up the major part of the labor force but have the lowest percentage of private pension coverages. In fact, 80% of all women are concentrated in the low-paying sections of the labor force. Colleges and universities, among other businesses, employ women in jobs working 20 hours per week so they do not accrue any retirement or other benefits although they may work for 20 years as steady employees and would gladly work 2/3 time rather 1/2 time to accommodate their family roles. But that would require retirement benefits.

When I mentioned a "career or life pattern" for women, I did not mean only a career pattern for work outside the home. I mean a career or life pattern that includes the full time spent in rearing children today and work outside the home. The question is what changes are needed in law, job rights, and family expectations in order to develop a secure career pattern for men and women who place value on the home and are willing to make choices which may have fewer economic rewards at particular stages but have long-term job and financial security.

There have been dramatic changes in the law affecting women's roles in North Carolina. For example, since 1968 men as well as women have been entitled to alimony or maintenance upon proof of fault and dependency.[6] Women

are no longer presumed to be the dependent spouse in a marriage and automatically entitled to support. Support for children is only guaranteed until age 18 and after October, 1983 may be guaranteed only until high school graduation, with the judge's discretion. In 1979 we became a no-fault divorce state without defenses of fault.[7] Women found themselves divorced against their will, with no right to share in a former spouse's retirement, his future inheritance or to inherit from him, and without any group medical insurance--all previously secured benefits for the homemaker. Thus, women were entitled to continued support only upon showing of fault. Since 1981 women share the primary responsibility of supporting children of the marriage due to a change in law.[8] North Carolina does now have the Equitable Distribution of Property Act which for the first time places value on the non-financial contribution of a spouse in the marriage and has been a great "leap" forward for women who have performed in the traditional household role.[9] At the same time we must now draw attention to inheritance laws which do not place proper value on women. Although a spouse may be entitled to 1/2 of the marital assets upon divorce, the amount may be reduced to 1/3 by death if there is more than one child surviving.

We have come to a point where equity for women requires different priorities in the marriage. One member may need to curtail individual ambition so that the other can have an opportunity for personal and professional fulfillment. The male junior executive or blue collar worker may be expected to cut back his hours and stall temporary promotions in order to care for the children and cook meals while his wife finishes business school or special technical training.[10]

We are also at the point of recognizing that many male accomplishments in the past have been made possible by the "back up" system of wifely support. The older career pattern for women is one of complete service to the male career. At one time it was a good investment to be the doctor's or lawyer's wife. Today, it has limited security. Under no-fault divorce a good wife can be discarded as easily as a bad wife. A woman who takes on the major nurturing role in the family does all the wrong things for her future financial security. The major dilemma is that she loses job seniority and advancement opportunity. She suffers from the "lost opportunity cost." Take, for example, a recent female client of mine and look at the issue of retirement as a family asset. Under the federal Employment Retirement Income Security Act (ERISA) of 1974, the years worked prior to age 25 are not required to be counted as years toward retirement benefits. Does it come as a surprise that women are in the work force in the highest percentage between the ages of 18 and 25--7 years which do not count toward retirement. Under ERISA 3 years of continued work are necessary to be counted toward retirement vesting. In this case the woman had worked since age 21. At age 28 she had just accrued some retirement and decided to interrupt work to have a child. What did she do with her retirement? Cashed it in! She was out of work for 1 year and went back for 2 years and then had another child. She was not back at work long enough to start retirement vesting again. She was then out for 1 year and back on the job for another 2 years when the husband suggested she stay out a year due to family stress. At this point she was 35, had worked 11 years and had no retirement built up. He then had another plan. He left her for another woman.

She had done all the right things for the family and the children and yet when abandoned had no financial security. By contrast, the husband had done

all the right things for financial security. Because he kept the same job and avoided work interruptions, his retirement benefits have grown and it is all separate property. Under North Carolina law, the wife has no interest in his retirement.[11] This is particularly disturbing in the area of military pensions, which in North Carolina are not marital property. Thus, we stand to remain the dumping ground for military spouses.

These considerations lead me to recommend that we change North Carolina law as follows:

-- Lower the minimum age for participation in private pension plans from 25 to 21.

-- Allow company-approved maternity/paternity leave (even of 1 year or more) to count as service for vesting, benefit, and participation of pension accrual.

-- Require consent of both spouses to waive (terminate) the "joint and survivor" or supervisor's benefit rights of a retirement plan referred to as "opt out."[12]

-- Require payment of survivor's benefits if the participant is vested and dies before retirement.

-- Establish pensions and deferred income benefits as a legitimate property right and as marital property in North Carolina.[13]

Statistics show that divorce is a financial catastrophe for most women. In just 1 year they experience a dramatic decline in income and a drop in their standard of living. It is difficult to imagine how many women and children survive this severe economic deprivation. Every expenditure which is taken for granted must suddenly be cut to 1/2 or 1/3 of that to which one is accustomed. A recent study on the economics of divorce in California noted that after 1 year of divorce, the male standard of living increased by 42% and the female's post-divorce standard of living was reduced by 73%.[14] The limited information we have at this time would indicate that those percentages would be comparable for North Carolina. The courts do not take seriously enough the needs for higher child support and enforcement of child support. I think women will eventually need to organize child support enforcement court watchers--the same as DUI court watchers--in order to see reasonable amounts of child support awarded and actually collected.

Women no longer have a choice of being a homemaker or working outside the home. They have been combining these roles for years but now must do this more seriously and with a plan of action, with organized time off for children, not on a ricochet from divorce, disability, or death of a spouse. Unmarried women are equally disadvantaged by the attitudes we have toward a vague life plan for women. Women have not been challenged to do the best for themselves. A new plan of action for women which incorporates their roles as wife, mother, volunteer, worker, and which assures their financial security, is a must.

This leads us directly to the problems of the single parent. The problem the single parent faces in North Carolina (as in all states) is that the single parent is usually a female parent with low pay, low job prestige, and

no flexibility on the job to deal with family crises. The male single parent who statistically has a higher work status and salary, has an easier job as a single parent. Often he is not waiting for child support because he has been the major breadwinner and earns enough for almost the full support of the child or children.

Women's roles do not change in a vacuum. We have spent so much time on the changing roles of women and have thought little of men who are seeing their main career support system folding. The male is not legally required to contribute to the care of the child and society does not propel him into the role. Perhaps our law should squarely place the responsibility for child rearing on both parents as we have with financial support.

This reminds me of a recent situation in a North Carolina law firm in which on different occasions two male junior partners called in with sick children and took time off. The firm had no policy on the issue. Men in the firm had never assumed that role before. The average child in America experiences 19 days of illness each year which may force a parent to either stay home from work, be late for work, or go to work feeling guilty or worried. The wife of one of the senior partners explained how these young male attorneys had shirked their responsibilities at work and had stayed at home to take care of a sick child because their wives were in jobs where they had no flexibility and would risk loss of their jobs if they stayed home to care for a sick child. The young lawyers evidently felt more secure in that they were in a more flexible situation and would not lose their jobs. At the same time, the law firm felt it needed to establish a policy to deal with such situations in the future. The wife of the senior partner was indignant at what had happened. Her husband had never missed work to care for children. She was always at home, and she felt that these couples should have to make other plans. She grew up in the "complete service to the male career" pattern and had no compassion for the young people. I was delighted that fathers were assuming and sharing responsibility for their children.

There is hope. Parents need leave days to care for children, "personal leave days" to use as the employee sees fit, or an employer's nurse's aide to be sent to the home to care for the sick child so the parent can work.

We need to begin considering such policies as one sees in Israel and in Scandinavian countries where the mother or one working parent is entitled to a post-natal leave of up to 9 months unpaid leave of absence after birth or adoption of a child. The job security of the parent should be guaranteed during that leave, and the time should count toward seniority and service for retirement vesting. Flextime, sick leave during a child's illness, liberal health care benefits, and "wellness" care time for children must be granted. Society must be prepared to make these compromises and to provide these benefits to mothers and fathers if we are to have strong families. Men now make up a much smaller percentage of the labor force than previously, but our work policies are still set for the male life pattern.

Most potential mothers in North Carolina are appalled to learn that there are no job rights related to pregnancy. The only protection is that pregnancy must now be treated as any other medical disability or illness. The law does not allow or prescribe any times of leave for pregnancy. If a company in North Carolina allows a 6-month leave for heart attack when a person is unable to work, then it may apply the same practice to pregnancy if a doctor will

verify that a new mother is not able to work. There is no right to a leave from work to care for a small child and a guaranteed right for return to work.

In fact, the calls I have been getting in this area lately have concerned the harrassment of pregnant women. Employers give them less favorable work schedules, and change job requirements with the effect of making the woman feel she is being put to the test to leave the job early. Statistics show that these women usually return to different jobs because their old job is not guaranteed for them. As a result, they lose job seniority and often must start all over again just because they make a reasonable decision to stay out of work for 6 months or a year with a small child.

Women have made great strides in equal employment rights through the Equal Pay Act of 1962, the Age Discrimination Act, and Title VII of the Civil Rights Act of 1964, the last of which prohibits discrimination based on sex in businesses with over 15 employees. Unfortunately, a large majority of jobs for women in North Carolina do not fall under this protection. Further, it is predicted that the increase in jobs in North Carolina between now and 2000 will be primarily in small businesses with less than 25 employees--precisely the businesses offering women the least protection. As women have improved their economic status and work position they have been greeted by sex discrimination in insurance. The issue is not new; the awareness is new. For the first time in history women workers have had the income to purchase disability insurance and annuities and have learned that both are still unaffordable due to sex discrimination. In the area of disability insurance in North Carolina, women between the ages of 25 and 45 pay from 30-50% more than males for the same disability insurance.

A new issue has developed in the United States and North Carolina regarding the reproductive effects of work-related substances. A recent North Carolina case has brought to light the danger of a "fetal vulnerability" policy in excluding women from certain jobs and work areas. In this case, female employees at the Pisgah Forest, North Carolina, plant of Olin Corporation filed a suit claiming a variety of discriminatory employment practices, among them the company's policy that prohibited women from performing certain jobs because of the possibility that lead exposure would harm either the pregnant woman, her fetus, or her prospective fetus.

The appeals court said that compelling medical evidence had not been offered and sent the case back for a full hearing. The problem is that there is not sufficient evidence at this time regarding chemicals, physical agents, and other work environment hazards and their effects on reproductive defects for men and women. To propose a policy which excludes only women from certain exposures which are capable of inducing reproductive effects in all workers discriminates against women's rights to fair employment and equally discriminates against men's rights to equal health protection. There should be a standard that protects the most susceptible workers, not just women.

Economic necessity in the short and long range dictates that most women continue work and return to work after child birth. Nearly 50% of the married women with children under 6 are now working compared with 19% in 1960, and nearly 66% of the married women with children over 6 years of age are working. Someone must battle for new institutions and policies to help these families,

many of which are single-parent families. We need to consider child care options for businesses and institutions. Governor Hunt's staff has compiled fine policy proposals for helping working parents called "Child Care Options For Business."[15] These are family-sensitive work policies for company owned, operated, or subsidized child day care and other services that help working parents. With careful planning, 100% of the cost of such care for employees' children during work hours can be written off state and federal taxes as a deductible "ordinary and necessary business expense" for the employer.[16] North Carolina has a female labor force participation rate which is higher than any other southern state. Thus, a new priority must be given to child care crusades and to restructuring work.

The area of child support enforcement has been singled out by women as a most crucial area of concern for children and single-parent families. There are presently three bills before the legislature regarding child support. None of these will establish the level of child support which is necessary. In my opinion it will be necessary to establish by law a graduated table of child support payments based on a definite formula which is as predictable as the present tables for income taxes. The table should contain special columns for large cities, rural areas, and number of children, among other factors. The tables will need to be as airtight as the present formula for income taxes, taking into consideration the dollar expense of each child and the standard of living and income provided during the marriage.

Child support will only be paid systematically when it becomes as automatic as state and federal withholding on income for wages earned or paid as estimated child support taxes. I had a woman in my office recently with an 11-year-old child who had not received any child support since the child was 3 years old. The husband was under a court order of Forsyth County District Court to pay $75 per month child support. He has moved from one town to the other since that time, and on each occasion when the mother has almost caught up with him through his work, he has moved on to a new location. She is now unemployed and is receiving only $66 per week in unemployment pay. The father is a long-distance truck driver who has remarried and has two more children. It is basically impossible to track him down with court orders to be enforced in other states.

In another situation the parties entered into a separation agreement in August, 1982. The husband was to pay the wife $600 per month child support, but actually made only one payment. He lives in the same town. We have been in court on three occasions since then and he has unilaterally reduced the support to $250 per month. We must get a judgment for the arrearages and attach his property by execution. He has secreted his boat and three cars and other personal property. If the sheriff seizes them to satisfy the judgment of child support, my client must pay a surety bond and storage on the items until they are sold. She cannot financially absorb these costs. It has become practically a senseless act in North Carolina to secure an order or agreement for child support if the party who is to pay is determined to avoid the responsibility. Disappearance is the best avoidance.

The increasing fragility of marital ties and the changing attitudes about the economic dependency of women have left society with no alternatives but to develop a realistic life pattern for women. Men have known for centuries that they had to support themselves and a family. Women have thought for centuries that they would be provided for. Times have changed.

Footnotes

1. North Carolina Labor Statistical Abstract, 1979, p. 306.

2. In 1970, North Carolina workers were paid the second lowest hourly wage in the country (only Mississippi received less); in 1977, the lowest (U.S. Bureau of the Census, 1978, p. 424).

3. On July 1, 1983, after this paper was written, the North Carolina legislature changed the law and made all deeds, rents, profits, and so on joint property.

4. 83 U.S. (16 Wall) 130, 31 L.Ed. 442 (1873).

5. Ibid.

6. G.S. § 50-16.1 (3) and (4).

7. G.S. § 50-6.

8. G.S. § 50-13.4

9. G.S. § 50-20.

10. E. Boulding. Familial constraints on women's work roles. In M. Blaxale & B. Reagan (Eds.), Women and the workplace. Chicago: University of Chicago Press, 1976.

11. G.S. § 50-20(b)(2).

12. "Joint and Survivor" Option. A man or woman who chooses the joint and survivor option agrees to have his/her pension payments reduced during their lifetime so as to assure the surviving spouse of receiving some retirement income after the retired worker's death. For example with this option under the law, the survivor's benefits must be half of the benefits jointly received by the couple in retirement. A man who would receive a pension of $100 a month if he did not choose the joint and survivor option might receive only $80 a month during retirement if he claimed the option, but his wife would then be guaranteed pension benefits of $40 a month after his death. NCC-LAW, Sixth Report, June, 1981.

13. Recent North Carolina legislation has declared that vested pensions and retirement plans are marital property and as such are subject to property division under North Carolina's Equitable Distribution Law.

14. Weitzman, L. J., The economics of divorce: Social and economic consequences of property, alimony and child support awards. U.C.L.A. Law Review, 1981, 28, 1181-1268. See especially page 1251.

15. Helping working parents: Child care options for business. Raleigh, N.C.: Author, 1981. N.C. Department of Administration. For single copies, contact Florence Glasser, Division of Policy Development, N.C. Dept. of Adm., 116 West Jones St., Raleigh, N.C. 27611.

16. Internal Revenue Ruling 73-348, 1973-2; Internal Revenue Service Publication 535.